

JUL 5 1991

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The purpose of the organization as stated in the Articles of Incorporation is "...to administer and serve the common interests of the owners and occupants of [REDACTED], as a planned residential development, in [REDACTED] [REDACTED] under the Declaration of Covenants, Conditions, and Restrictions, as the same apply to it and are recorded in the Office of the Recorder of Deeds in said county, and under the laws regulating non-profit corporations in [REDACTED] particularly Act No. [REDACTED] [REDACTED]

Membership in the association is restricted to those who own real property in the [REDACTED] development.

Expenses are shown for grounds maintenance, painting, real estate taxes, and other miscellaneous expenses.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname							
Date	6/17/91	6/21/91	7/05/91				

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provide that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 72-102, published in Cumulative Bulletin 1972-1 on page 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for the use of residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by municipal governments, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, published in Cumulative Bulletin 1974-1 on page 131 modified Revenue Ruling 72-102 by stating guidelines under which a homeowners association could qualify for exemption under section 501(c)(4) of the Code. One guideline is that a homeowners association "must serve a community which bears a reasonably recognizable relationship to an area ordinarily identified as governmental in order to qualify under Code section 501(c)(4)."

This ruling reads in part: "A community within the meaning of section 501(c)(4) and the Regulations is not simply an aggregation of homeowners bound together in a structural unit formed as an integral part of a plan for the development of a real estate division and the sale of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof."

The area served by your activities consists of structural units formed as an integral part of a residential housing development plan. Such an area does not constitute a "community" within the meaning of Code section 501(c)(4) and the underlying regulations.

Revenue Ruling 74-99 also states that a "homeowners association must not conduct activities directed to the exterior maintenance of private residences and that the common areas of facilities must be for the use and enjoyment of the public."

Your "Declaration of Covenants, Conditions, and Restrictions" has procedures for maintaining the private residences and lots and common areas of your association. Your common areas are defined as "...real property owned by the Association for the common use and enjoyment of the members of the Association."

[REDACTED]

Revenue Ruling 74-99 states that Revenue Ruling 72-102 "...was intended only to approve ownership and maintenance by a homeowners association of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which, is intended to members of the general public, as distinguished from controlled use or access restricted to members of the homeowners association..."

Your common areas are not open for unlimited use and enjoyment of the general public.

You state in your response that you "cannot prevent access to non-residents as a certainty (but)(you) however, have posted 3 signs at all normal entry points and that the signs, paraphrased, state that "this property belongs to [REDACTED] and that trespassing is prohibited."

You state that "every attempt is made by [REDACTED] residents to inform non-members that they are not permitted to use this common area" and that the "general public may have access to this area, but it is restricted as much as possible."

You also state in your response that your recreational facilities are "available to all members of our Association whose monthly fees are paid in full". The entrances to the areas where these facilities are located are posted with signs notifying all who enter that "this is [REDACTED] Association property and that trespassing will not be permitted".

Your services do not benefit the community as a whole if your services are provided only to members of the Association who are the private owners of real property in the [REDACTED] private development.

One of the purposes of Revenue Ruling 74-99 is to preclude recognition of exemption of homeowners associations that serve private rather than public interests.

Your Declaration of Covenants, Conditions, and Restrictions also includes a Condominium Phase of development in [REDACTED]. Owners of a condominium unit individually own the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors of his unit. The common areas of the unit would consist of bearing walls, columns, floors, central heating, pumps, pipes, etc. Therefore, it is concluded that the common areas of the condominium project would not be accessible to or for the use and enjoyment of the general public.

Revenue Ruling 74-17 published in Cumulative Bulletin 1974-1 on page 130 states, in part, that the statutes of a particular state "impose a requirement on the owner of the project to make and record a declaration of project restrictions and servitudes prior to the conveyance of any condominium therein, such restrictions to bind all owners of condominiums in the project."

Revenue Ruling 74-17 goes on to state that, "by virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium properly derive from, and are established by statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of common areas or elements supportive to the individual units in a structural and/or functional sense. Thus any maintenance or care of such common areas or elements constitutes private benefit to the individual homeowner members as opposed to promoting the common good and general welfare of the people of the community."

Revenue Ruling 69-280 published in Cumulative Bulletin 1969-1 on page 152 holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under section 501(c)(4) of the Code.

Revenue Ruling 65-201 published in Cumulative Bulletin 1965-2 on page 170 holds that a cooperative organization operating and maintaining a housing development and providing housing facilities does not qualify for Federal tax exemption under section 501(c), or any other provision of the Code.

In *Commissioner v. Lake Forest, Inc.*, 305 F. 2nd 814 (4th Cir.1962), the court held that since a cooperative housing corporation's activities were of the nature of an economic and private cooperative undertaking, it was held not to be tax exempt as a social welfare organization under section 501(c)(4) of the Code.

Since your organization's activities are for the private benefit of its members, it cannot be said that your organization is organized or operated exclusively for promoting the common good and general welfare of the people of the community.

Based on the information submitted and the applicable law cited above, we conclude that you are primarily organized and operated to provide services for the personal benefit of your members and not primarily for promoting in some way the common good and general welfare of the people of the community as a whole. Therefore, you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code.

In accordance with this determination, you are required to file Form 1120 for Federal income tax purposes.

Your attention is called to Code section 528, which provides certain procedures by which a qualifying homeowners association may elect to be treated as a tax exempt organization.

[REDACTED]

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office conference staff. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office or, if you request, at any mutually convenient District Office. If we do not hear from you within 30 days from the date of this letter, this determination will become final.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]

District Director

Enclosures: Publication 892
Publication 588